

**BEFORE**

**THE PUBLIC SERVICE COMMISSION OF**

**SOUTH CAROLINA**

**DOCKET NOS. 2021-143-E AND 2021-144-E**

IN RE:	Application of Duke Energy Progress, LLC	)	
	for Approval of Smart Saver Solar as	)	<b>SOUTH CAROLINA OFFICE OF REGULATORY STAFF'S MOTION FOR SUMMARY JUDGMENT REGARDING THE COMPANIES' PROGRAMS</b>
	Energy Efficiency Program	)	
		)	
	Application of Duke Energy Carolinas, LLC	)	
	for Approval of Smart Saver Solar as	)	
	Energy Efficiency Program	)	
		)	

---

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively referred to herein as the “Companies”) filed their respective Application’s for Approval of Smart Saver Solar as Energy Efficiency Programs (collectively the “Programs”) with the Commission on April 23, 2021. The South Carolina Office of Regulatory Staff (“ORS”) files this Motion for Partial Summary Judgment pursuant to S.C. Code Ann. Regs. § 103-829 and South Carolina Rule of Civil Procedure 56 asserting it is entitled to a ruling as a matter of law that the Companies’ Programs violate the plain language of S.C. Code Ann. § 58-40-20(I) and are unlawful, and, therefore, cannot be approved. In support thereof, ORS would show as follows:

As set forth in the Applications and the Companies’ pre-filed testimony, the Programs, if approved, would provide residential customer generators who apply to install rooftop solar and receive service under Rate RE within the Solar Choice Metering Program on or after January 1, 2022, with a one-time Rooftop Incentive Payment of \$0.36/Watt-DC.<sup>1</sup> According to the

---

<sup>1</sup> DEP’s Application, p. 4; DEC’s Application, p. 4.

Companies, only customers who became Solar Choice Metering customers “on or after January 1, 2022,” are eligible to participate and those customers must comply with all installation and interconnection requirements of the Residential Solar Choice Rider (the “Rider”).<sup>2</sup> The Companies represent that the Rider provided the foundation for net metering and the Companies are not proposing to modify the Rider or how customers net meter under the Rider.<sup>3</sup>

Importantly, the Companies request that the Public Service Commission of South Carolina (“Commission”) approve their Programs to be included as part of their suite of EE/DSM programs.<sup>4</sup> In this manner, the Companies assert they will “recover Program costs through the Companies’ annual EE/DSM rider proceedings pursuant to the cost recovery mechanism,”<sup>5</sup> including the recovery of lost revenues associated with participating NEM customer generation,<sup>6</sup> pursuant to Commission Order Nos. 2021-32 and 2021-33.<sup>7</sup> Thus, there is no dispute that the Companies are requesting a) approval of the Programs as EE/DSM programs, b) that EE/DSM programs earn lost revenues pursuant to Commission Order Nos. 2021-32 and 2021-33, and c) that the Companies are entitled to recover lost revenues as part of these Programs.

---

<sup>2</sup> Direct Testimony of Lynda Shafer, p. 4, ll. 19-22.

<sup>3</sup> See Direct Testimony of Lynda Shafer, p. 4, ll. 21-22, p. 5, ll. 1-3.

<sup>4</sup> Application of DEP, p. 1; Application of DEC p. 1; *see also* Direct Testimony of Lynda Shafer, p. 3, ll. 9-12; Direct Testimony of Timothy Duff, p. 3, ll. 10-23; *see also* pp. 4-5.

<sup>5</sup> Direct Testimony of Lynda Shafer, p. 7, ll. 15-17.

<sup>6</sup> Recovery of lost revenue ensures “that the new income of an electrical or gas utility regulated by the Commission after implementation of specific cost-effective energy conservation measures is at least as high as the net income would have been if energy conservation measures had not been implemented.” *See* S.C. Code Ann. § 58-37-20; *see also* Direct Testimony of Lynda Shafer, p. 7, ll. 15-17.

<sup>7</sup> “DEC shall be permitted to recover, through the DSM/EE rider, [Net Lost Revenues] associated with the implementation of approved DSM and EE Measure Units or Programs, subject to the restrictions set out below.” Commission Order No. 2021-32; “DEP shall be permitted to recover, through the DSM/EE rider, NLR associated with the implementation of approved DSM and EE Measure Units or Programs, subject to the restrictions set out below.” Commission Order No. 2021-33.

Further, the Companies make clear that these Programs fall within the Solar Choice Program<sup>8</sup> approved by this Commission pursuant to Commission Order No. 2021-390,<sup>9</sup> which was in turn issued pursuant to S.C. Code Ann. § 58-40-20.<sup>10</sup> Accordingly, there is no dispute that these Programs exist within the Solar Choice Program approved pursuant to S.C. Code Ann. § 58-40-20.

Viewing the facts most favorable to the Applicant Companies, the following material facts, therefore, are undisputed:

- The Companies are entitled to seek net lost revenue through DSM/EE programs;
- The Companies assert these Programs are DSM/EE programs;
- The Companies are seeking lost revenues through the Programs;
- These Programs fall within the Solar Choice Program; and
- The Solar Choice Program was approved pursuant to S.C. Code Ann. § 58-40-20.

According to S.C. Code Ann. § 58-40-20(I), “[e]lectrical utilities are prohibited from recovering lost revenues associated with customer-generators who apply for customer-generator

---

<sup>8</sup> Duff Direct Exhibit No. 1, pp. 3-4 (“DEC proposes to offer an incentive for each new watt of solar PV installed by customers eligible for service under rate Schedule RE within the Solar Choice Program.”); Duff Direct Exhibit No. 1, p. 10. Regarding DEC, (“[t]he Customer must comply with all installation and interconnection requirements of the proposed Residential Solar Choice rider.”); Duff Exhibit No. 2, p. 3 (“DEP proposes to offer an incentive for each new watt of solar PV installed by residential customers within the Solar Choice Program.”). Regarding DEP, Duff Exhibit No. 2, p. 9 (“[t]he Customer must comply with all installation and interconnection requirements of the proposed Residential Solar Choice rider.”); Direct Testimony of Lynda Shafer, p. 4, ll. 19-22, p. 5, ll. 1-3.

<sup>9</sup> N. 1, Direct Testimony of Lynda Shafer, p. 4 n.1; Order No. 2021-390 applies to both DEC and DEP.

<sup>10</sup> See Docket No. 2020-264-E — Duke Energy Carolinas, LLC's Establishment of Solar Choice Metering Tariffs Pursuant to S.C. Code Ann. Section 58-40-20 (See Docket No. 2019-170-E); Docket No. 2020-265-E — Duke Energy Progress, LLC's Establishment of Solar Choice Metering Tariffs Pursuant to S.C. Code Ann. Section 58-40-20 (See Docket No. 2019-169-E); see also “[t]his proceeding arises out of the NEM provisions within Act 62 that direct this Commission to ‘establish a ‘solar choice metering tariff for customer-generators to go into effect for applications received after May 31, 2021.’ Order No. 2021-390, pp. 22-23; “[t]he Commission's consideration of these tariffs is guided by the broader expression of the General Assembly’s intent in S.C. Code Ann. § 58-40-20(A),” *id.* p. 23, among others.

programs on or after June 1, 2021.” It, therefore, is unlawful for the Companies to recover any lost revenues incurred as a result of these Programs.

Moreover, the Companies are clear that all Program participants must be net metering customers. Application Exhibit A; Direct Testimony of Lynda Shafer, p. 4, ll. 19-22.<sup>11</sup> All net metering customers are customer-generators. S.C. Code Ann. § 58-40-10(C). All Program participants “must become a new net metering customer **on or after January 1, 2022[.]**” Application Exhibit A (emphasis added). The only way for a residential customer to become a new net metering customer on or after January 1, 2022 is under the Rider. S.C. Code Ann. § 58-40-20(B); *see* Order No. 2021-390 at 38. All customers who apply for the Rider will necessarily apply to become net metering customers **after June 1, 2021**. Order No. 2021-390 at 38. According to S.C. Code Ann. § 58-40-20(I), however, “[e]lectrical utilities are prohibited from recovering lost revenues associated with customer-generators who apply for customer-generator programs **on or after June 1, 2021**.” It, therefore, is unlawful for the Companies to recover any lost revenues incurred as a result of these Programs

Pursuant to South Carolina Rule of Civil Procedure Rule 56, in order to be successful on a Motion for Summary Judgment, the movant must “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

There is no genuine issue as to any material fact regarding the Companies’ sought recovery of lost revenue from these Programs or that these Programs are Solar Choice Programs approved

---

<sup>11</sup> *See also* Duff Direct Exhibit No. 1, pp. 3-4 (“DEC proposes to offer an incentive for each new watt of solar PV installed by customers eligible for service under rate Schedule RE within the Solar Choice Program.”); Duff Direct Exhibit No. 1, p. 10 (“[t]he Customer must comply with all installation and interconnection requirements of the proposed Residential Solar Choice rider.”); Duff Exhibit No. 2, p. 3 (“DEP proposes to offer an incentive for each new watt of solar PV installed by residential customers within the Solar Choice Program.”); Duff Exhibit No. 2, p. 9 (“[t]he Customer must comply with all installation and interconnection requirements of the proposed Residential Solar Choice rider.”); Direct Testimony of Lynda Shafer, p. 4, ll. 19-22, p. 5, ll. 1-3.

pursuant to S.C. Code Ann. § 58-40-20. South Carolina Code Ann. § 58-40-20 specifically and expressly prohibits the recovery of the lost revenue that the Companies are requesting to recover. The Companies, therefore, are attempting to recover through the Programs that which the law has explicitly prohibited.

For these reasons, the ORS respectfully requests that the Commission summarily dismiss the Companies Applications with prejudice. In the alternative, ORS respectfully requests that the Commission dismiss the Applications without prejudice to allow the Companies the ability to refile amended Applications with the express condition that the Companies may not recover any lost revenues incurred as a part of the Programs.

The Companies' Programs are prohibited as a matter of law and should be dismissed with prejudice. Accordingly, ORS respectfully requests that the Commission summarily dismiss, with prejudice, the Companies' applied for Smart Saver Solar as Energy Efficiency Programs and:

1. Grant this Motion for Summary Judgment to ORS; and
2. Order such additional relief which the Commission may deem necessary to protect the fundamental rights of the Companies' customers.




---

Alexander W. Knowles, Esquire  
 Andrew M. Bateman, Esquire  
 Benjamin P. Mustian, Esquire  
**South Carolina Office of Regulatory Staff**  
 1401 Main St., Ste. 900  
 Columbia, SC 29201  
 Phone: (803) 737-0800  
 (803) 737-0801  
 Email: [aknowles@ors.sc.gov](mailto:aknowles@ors.sc.gov)  
[bmustian@ors.sc.gov](mailto:bmustian@ors.sc.gov)  
[abateman@ors.sc.gov](mailto:abateman@ors.sc.gov)

September 27, 2021